IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

ST.Rev..No. 485 of 2004

(TA.No.204/2001 OF KERALA AGRICULTURAL INCOME TAX & SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH-II, PALAKKAD.
(ORDER DATED 4-05-2002)

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REVISION PETITIONER/APPELLANT/REVENUE:

STATE OF KERALA,
REP. BY THE DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES,
ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN.

RESPONDENT: RESPONDENT/ASSESSEE:

M/S. KALYAN PRODUCTS,
SQUASH, SAUCE, PICKLES, JAM ETC.
KUTTANELLUR.

BY ADV. SRI.E.P.GOVINDAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 02/11/2007,

THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.No.485 of 2004

Dated, this the 2nd day of November, 2007

ORDER

H.L.Dattu, C.J.

The question before us in this tax revision case is, whether jam and sauce are one and the same commodity and if they are one, they could be brought to tax under Entry 87 of the First Schedule to the Kerala General Sales Tax Act, 1963 ('the Act' for short) and if they are not so, since Entry 87 speaks of only sauce, then jam requires to be brought to tax as an unclassified item.

(2) Keeping the aforesaid aspect of the matter in view, let us notice briefly the facts situation.

(3) The assessment year in question is 1997-98. The assessee is a manufacturer of pickles, squash, sauce and jam.

(4) The assessee has filed his annual returns for the assessment year 1997-98 and in that had claimed that jam and sauce are unclassified items and therefore requires to be taxed under Entry 156 of the First Schedule to the Act.

(5) The claim so made by the assessee was not accepted by the assessing authority. Therefore, had issued a pre-assessment notice, inter alia, proposing to tax the sale of jam and sauce by the petitioner under Entry 87 of the First Schedule to the Act, at 20%.

(6) The assessee had filed his reply to the said pre-assessment notice and in that had taken a specific contention that jam and sauce are unclassified items and therefore, require to be taxed under Entry 156 of the First Schedule to the Act at 10%.

(7) The assessing authority has rejected the reply filed by the assessee and thereafter has proceeded to tax the sale of jam and sauce as items falling under Entry 87 of the First Schedule to the Act and has levied tax at the rate of 20%.

(8) The orders so passed by the assessing authority was the subject matter of the appeal before the first appellate authority in S.T.A.No.396 of 2000. In the appeal, the assessee had confined his claim only to the sales of jam effected by him for the assessment year 1997-98. In the grounds of appeal, the assessee had contended that the assessing authority was not justified in bringing to tax the sale of jam under Entry 87 of the First Schedule to the Act and it was his specific contention that jam is not included under Entry 87 of the First Schedule to the Act and therefore, it requires to be treated as an unclassified item which requires to be taxed only at the rate of 10%.

(9) The first appellate authority has accepted the contention canvassed by the assessee and accordingly has modified the orders passed by the assessing authority by directing the assessing authority to treat the sales of jam effected by the assessee to be classified as an unclassified item and be taxed only at the rate of 10%.

(10) The Department's appeal is rejected by the Sales Tax Appellate Tribunal.

(11) The Revenue being aggrieved by the orders passed by the first appellate authority and the orders passed by the Tribunal in T.A.No.204 of 2001 dated 4.5.2002 have presented this tax revision case.

(12) The Revenue has raised only one question of law for consideration

and decision of this Court. The question is as under:

> "Whether on the facts and in the circumstances of the case, Tribunal is justified in holding that jam and sauces (sauce – sic) is an unclassified item."

(13) Sri.Vinod Chandran, learned Government Pleader, vehemently contends before us that jam is similar to sauce and therefore, both the first appellate authority and the Tribunal were not justified in reversing the findings of the assesssing authority. In aid of his submission learned counsel has taken us through the relevant Entries in the First Schedule to the Act.

(14) Per contra, Sri.C.P.Govindan, learned counsel for the assessee, ably justifies the orders passed by the first appellate authority and the Tribunal. Learned counsel also gives us a note on the process of jam preparation and the tomato sauce.

(15) Before we advert to the contentions canvassed by the learned counsel appearing for the parties to the lis, in our opinion, it would be desirable to notice the relevant Entries.

(16) Entry 87 of the first schedule to the Act is as under:

> "87. Non-alcoholic drinks, squashes, sauces, aerated waters, mineral water, beverages, Horlicks, Boost, Bournvita, Complan, Glucose D, Glucovita and similar items whether bottled, canned or packed."

(17) A reading of the Entry would definitely indicate that the sauce is included under Entry 87 of the First Schedule to the Act.

(18) Entry 156 of the First Schedule to the Act speaks of all other goods not coming under any other Entry in any of the Schedules under the Act. The

rate of tax on the sale of non classified/unclassified items is only at the rate of 10%.

(19) Learned counsel Sri.Vinod Chandran would submit that the expression 'similar items' used under Entry 87 of the First Schedule to the Act would take within it jam also and therefore, the assessing authority is justified in bringing to tax jam under Entry 87 of the First Schedule to the Act.

(20) To appreciate the stand of the learned counsel, in our opinion, the common parlance/commercial parlance test requires to be applied. In common parlance the jam is not equated to the sauce, nor sauce is equated to the jam. When a consumer wants sauce a dealer will not give him the jam and vice versa is also true.

(21) Even the process of preparation of the jam and sauce are different. Jam and tomato sauce are prepared as under:

> JAM
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> "Around 30% of fruit pulp of the desired quantity of jam is made into pulp and mixed with 70% of sugar. The mixture is boiled and brought into a consistency of 75° to make a final product. The required acid and flavours are added towards the end of the preparation. It is then filled into the required packing sealed, labeled and packed.
>
> TOMATO SAUCE
>
> Fresh tomatoes are washed, pulped and passed through a fruit pulper to remove seeds and the outer skin. It is then mixed with water, 10% of sugar and other spice powders, garlic and onion paste is added. It is stablized with acid. Thickening agents are added to bring the final product to the desired consistency. It is packed and labeled."

(22) Keeping in view the Entry 87 of the First Schedule to the Act, the first appellate authority has rightly come to the conclusion that jam does not find

a place in Entry 87 of the First Schedule to the Act. If that is so, necessarily and naturally it should fall under the general Entry, namely Entry 156 of the First Schedule to the Act. If that is so, the rate of tax payable by the assessee is only at the rate of 10% on the sale of jam. In that view of the matter, we are of the opinion that the first appellate authority and the Tribunal are justified in coming to the conclusion that the sale of jam requires to be brought only under Entry 156 of the First Schedule to the Act. Accordingly, the revision petition filed by the revenue requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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